

University of California
Systemwide Administration

Office of the
Assistant Vice President —
Business Management
Contracts and Grants Office

Memo

Operating Requirement

No. 83-33
December 2, 1983

VICE CHANCELLORS — BUSINESS AND FINANCE/ADMINISTRATION* CONTRACTS AND GRANTS OFFICERS (NON-LAB) SYSTEMWIDE ADMINISTRATION FUNCTIONAL MANAGERS

Subject: Exempt Status of The Regents of the University of California under
Section 501(c)(3) of the Internal Revenue Code of 1954

The Internal Revenue Service made a determination in 1939 that The Regents of the University of California was tax exempt under Section 101(6) of the Internal Revenue Act of 1938. This was formalized in a letter to The Regents dated September 14, 1939 (see Enclosure 1).

Pursuant to a request by the Office of the General Counsel, the IRS has subsequently indicated in a letter to The Regents dated September 8, 1982 that the University continues to be exempt under Section 501(c)(3) of the Internal Revenue Code of 1954 (see Enclosure 2). Section 501(c)(3) was derived from, and continues without substantive change, the language of Section 101(6) of the Internal Revenue Act of 1938. This determination of the University's exempt status will remain in effect until the exemption has been terminated, revoked, or modified by the IRS.

Also, in a letter to The Regents dated November 23, 1973, the IRS has acknowledged that the University is not a private foundation within the meaning of Section 509(a)(1) of the IRS Code of 1954 (see Enclosure 3).

These letters from the IRS to The Regents may be provided to sponsors as certification of the University's tax exempt status.

Refer: Barbara Perry
(415) 642-2886
ATSS 582-2886

Subject Index: 13
Organization Index: U-115

David F. Mears
University Contracts and
Grants Coordinator

Enclosures

cc: Lab Contract and Grant Officers

WASHINGTON

OFFICE OF
COMMISSIONER OF INTERNAL REVENUEADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
AND REFER TO

IT:P:T:1

CQ

SEP 14 1939

The Regents of the University of California,
Berkeley, California.

Attention: Luther A. Nichols,
Comptroller.

Sir:

Reference is made to the information furnished by you for use in determining your status for Federal income tax purposes. The question of your exemption arose in connection with the Wilmerding School of Industrial Art, San Francisco, California.

The evidence discloses that you are the regularly constituted state university of the State of California created by a state legislative act in 1868; that you are engaged in educational activities; that your income is derived from investments, endowments, tuition, and miscellaneous sources; and that your income is used to defray general maintenance and operating expenses. The Wilmerding School of Industrial Art is under your control and is administered as a preparatory school and junior college.

It appears that you and your constituent schools are entitled to exemption under the provisions of section 101(6) of the Revenue Act of 1938 and the corresponding provisions of prior revenue acts. You are not, therefore, required to file returns for 1938 and prior years. Inasmuch as section 101(6) of Internal Revenue Code (53 Stat., Part 1) is similar to section 101(6) of the Revenue Act of 1938, returns of income will not be required for 1939 and subsequent years so long as there is no change in your organization, your purposes or your method of operation.

Any changes in your form of organization or method of operation, as shown by the evidence submitted, must be immediately reported to the collector of internal revenue for your district in order that the effect of such changes upon your present exempt status may be determined.

The exemption referred to in this letter does not apply to taxes levied under other titles or provisions of the Revenue Act of

The Regents of the University of California.

1938 and the corresponding provisions of prior revenue acts, or the Internal Revenue Code except insofar as exemption is granted expressly under those provisions to organizations enumerated in section 101(6) of the Revenue Act of 1938 and the corresponding provisions of prior revenue acts or in section 101 of the Internal Revenue Code.

Contributions made to you by individual donors are deductible by such individuals in arriving at their taxable net income in the manner and to the extent provided by section 27(o) of the Revenue Act of 1938 and the corresponding provisions of prior revenue acts, section 23(o) of Internal Revenue Code and section 23(o) of Internal Revenue Code as amended by section 224 of the Revenue Act of 1939. The deductibility of contributions by corporations is governed by section 23(q) of the Revenue Acts of 1938 and 1939, section 23(q) of Internal Revenue Code and section 23(q) of Internal Revenue Code as amended by section 224 of the Revenue Act of 1939.

A copy of this letter is being transmitted to the collector of internal revenue for your district.

By direction of the Commissioner.

Respectfully,

Forney
Deputy Commissioner.

Internal Revenue Service

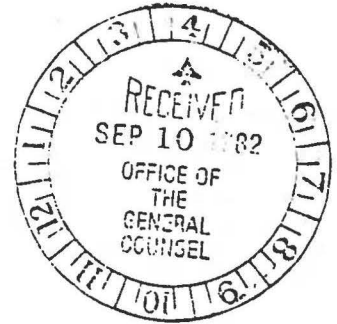
Department of the Treasury

District
Director450 Golden Gate Ave.
San Francisco, Calif. 94102

► The Regents of the University
of California
c/o The Office of the General
Counsel
590 University Hall
2200 University Avenue
Berkeley, CA 94720

Person to Contact:
Desk Officer
Telephone Number:
(415) 556-5353
Refer Reply to:
EP/EO:1
Date:

8 SEP 1982



Re: Request for Confirmation of Exempt
Status under Section 501(c)(3) of
the Internal Revenue Code of 1954

Dear Regents:

This is in reference to your letter of July 13, 1982 requesting confirmation of the exempt status of The Regents of the University of California under section 501(c)(3) of the Internal Revenue Code of 1954.

In our letter of September 14, 1939, Code IT:P:T:1 CQ, it was held that you were entitled to exemption under the provisions of section 101(6) of the Revenue Act of 1938.

A determination or ruling letter issued to an organization granting exemption under the Internal Revenue Code of 1954 or under a prior or subsequent Revenue Act remains in effect until exempt status has been terminated, revoked or modified.

Our records indicate that you are the regularly constituted state university of the State of California originally created by a state legislature act of 1868; that you are engaged in educational activities; that your income is derived from investments, endowments, tuition, and miscellaneous sources; and that your income is used in furtherance of your educational activities.

In addition, it appears from our records (including the information submitted with your letter of July 13, 1982), that there has been no change in your organization's exempt status. Accordingly, our letter of September 14, 1939 is still in effect. This letter does not constitute a no change examination letter.

Because section 501(c)(3) of the Internal Revenue Code of 1954 was derived from and continues, without substantive change, the language of section 101(6) of the Revenue Act of 1938 ("1939 Code") and because our letter of September 14, 1939 is still in effect, it appears that you and your constituent units are entitled to exemption as an organization described in section 501(c)(3) of the 1954 Code.

Donors may deduct contributions to you as provided in section 170 of the Internal Revenue Code of 1954 (formerly section 23(0) of the Internal

The Regents of the University of California

Revenue Code of 1938). Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes as provided in the applicable provisions of sections 2055, 2106, and 2522 of the Internal Revenue Code of 1954.

You are not required to file Form 990, Return of Organization Exempt from Income Tax, because you are a State institution, the income of which is excluded from gross income under section 115(a) of the Internal Revenue Code of 1954.

You are not required to file Federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T. This office has not been asked to consider and therefore, in this letter, we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Internal Revenue Code of 1954.

Because this letter could help resolve any questions about your exempt status, you should keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone are shown in the heading of this letter.

Sincerely,

Michael Sassi

District Director

Department of the Treasury

Internal Revenue Service

7/12/73 (10/1/73) (10/1/73) (10/1/73)

Date

28 NOV 1973

In reply refer to

T:MS:EO:R:1:3

The Regents of the University
of California
Suite 689, University Hall
2200 University Avenue
Berkeley, California 94720



EIN

DO 94

Gentlemen:

Based on the information you submitted, we have classified you as an organization that is not a private foundation as defined in section 509(a)(1) of the Internal Revenue Code.

Your classification is based on the assumption that your operations will be as stated in your notification. Any changes in your purposes, character, or method of operation must be reported to your District Director, San Francisco, which is your key district for exempt organization matters.

We are notifying your key District Director of this action.

Sincerely yours,

Milton Cerny
Chief, Rulings Section I
Exempt Organizations Branch

UCOP

Research Administration Library
(Library Copy)
12th Floor
Kaiser Building
Oakland

University of California
Office of the President

University Controller

Research Administration Office

Memo

Operating Guidance

No. 83-33

Supplement No. 1
January 19, 1993

VICE CHANCELLORS—BUSINESS AND FINANCE ADMINISTRATION*
CONTRACT AND GRANT OFFICERS
OFFICE OF THE PRESIDENT FUNCTIONAL MANAGERS

SUBJECT: Exempt Status of The Regents of the University of California--Clarification

Contract and Grant *Memo* No. 83-33 (December 2, 1983) provided documentation concerning the University's tax exempt status under Section 501(c)(3) of the Internal Revenue Code, and IRS acknowledgment that the University is not a private foundation within the meaning of Section 509(a)(1) of the Code. Tax laws governing private foundations are more burdensome than those governing other kinds of charitable organizations.

Recently, one campus was asked to complete a tax-exempt certification which asked for further information about the University's status as "not a private foundation," with reference to 170(b)(1)(A) of the Code. A brief background on the meaning of "private foundation" is given in Enclosure 1, which is copied from pp. 436-7 of *The Law of Tax Exempt Organizations* by Bruce R. Hopkins (John Wiley & Sons, 1987). Note that in §21.1 the text states that organizations deemed not to be private foundations are listed in the Code at 170(b)(1)(A)(i) through (v). Enclosure 2 is a copy of a form filed by the University in 1970 stating that it is not a private foundation because it is "a governmental unit, 170(b)(1)(A)(v)."

Thus the answer to the question about the University's status as not a private foundation is that the University is not a private foundation pursuant to 170(b)(1)(A)(v) of the Code. We hope this information will help other campuses that may have to complete a similar tax-exempt status form.

Refer: William Sellers
510-987-9847

Subject Index: 13
Organization Index: U-115



David F. Mears
Director
Research Administration Office

Enclosures

*Note: The addressees above represent the standard distribution of Contract and Grant Memos. Additional addressees, if any, may be added based on the subject of the Memo. See cc's.

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"Private Foundations" and "Public Charities"

Prior to enactment of the Tax Reform Act of 1969, there was no statutory definition of the term "private foundation." However, up to that time, a private foundation generally was recognized as a charitable organization to which contributions could be made which were deductible in an amount up to 20 percent of an individual donor's adjusted gross income, in contrast to contributions to churches, schools, hospitals, and other public charities, which were deductible to the extent of 30 percent of the donor's adjusted gross income.¹

This 30 percent/20 percent distinction was introduced in the federal tax law in 1964. Before that, it was not until 1954 that Congress acted in recognition of the fact that there are distinctive differences in the nature of charitable organizations. In that year, Congress permitted an extra ten percent deduction (from 20 to 30 percent) for contributions to operating educational institutions, churches, and hospitals, and enacted other provisions in their favor. In 1964, the privileged class of "30 percent organizations" was expanded to include other public and publicly supported organizations and a five-year carryover of excess contributions was added for gifts to these organizations.

By the mid-1960s, the likelihood that alleged private foundation abuses would eventually result in statutory modifications was on the increase. A Treasury Department Report on Private Foundations, issued in 1965, emphasized the view that there was a need for more public involvement in the operation of philanthropic institutions that benefit from preferential treatment under the tax laws. Failing such direct public involvement, the Treasury Report stated that there must be an assurance through other means (namely, governmental regulation) that funds set aside for appropriate charitable purposes will find their way promptly into the hands of those institutions where there is assurance of public control and operation.

Congress, having become convinced that there were problems concerning charitable organizations that needed remedy, believed that these problems

¹IRC § 170(b)(1) (pre-1969 Act).

were especially prevalent in the case of organizations in the 20 percent deduction category. On the other hand, it was also apparent that certain organizations in the 30 percent deduction group were not involved in these problems. Consequently, in enacting a definition of the term "private foundation," Congress conjured up a statute which provides that a private foundation is any domestic or foreign charitable organization,² other than four categories of organizations.³ The classification of the organizations which are deemed not to be private foundations—and hence are "public charities"—is the subject of IRC § 509(a).

The organizations which fall into the categories of IRC § 509(a)(1), (2), or (3) are those which either have broad public support or actively function in a supporting relationship to public charities.⁴ The fourth category of nonprivate foundation is the organization organized and operated exclusively for testing for public safety, as described in IRC § 509(a)(4). Contributions to public safety testing organizations are not deductible and therefore, according to the 1965 Treasury Report, they are more analogous to business leagues, social welfare organizations, and similar tax-exempt groups than to private foundations.

Despite the technicalities of the term "private foundation" accorded to it by Congress, a private foundation essentially is a charitable organization that is funded from one source (usually, one individual, family, or corporation), that receives its ongoing funding from investment income (rather than a consistent flow of contributions), and that makes grants for charitable purposes to other persons rather than conduct its own programs. The "private" aspect of a private foundation, then, principally looks to the nature of its financial support, rather than to the nature of its governance.

§ 21.1 "Public" Institutions

Organizations which are deemed not to be private foundations by reason of IRC § 509(a)(1) are essentially those in the old 30-percent deduction category.⁵ These organizations, that may be termed the "public" institutions, are described in IRC §§ 170(b)(1)(A)(i) through (v). Other organizations in other categories of nonprivate foundation status may also have the attributes of "institutions" but the entities in the "public" institution classification are those that are there because they satisfy—*per se*—the requirements of at least one category of "public" institution.

²That is, an organization described in IRC § 501(c)(3) (and exempt from federal income taxation under IRC § 501(a) for that reason).

³Reg. §§ 1.509(d)-1, 1.509(e)-1.

⁴Reg. § 1.509(a)-1.

⁵Reg. §§ 1.170(A)-9(a)(3), 1.509(a)-2.

1003

Notification Concerning Foundation Status

☐ For
☐ Cl.
☐ Col.
☐ Le.
☐ Con.

Enclosure 2

(June 1970)


Department of the Treasury,
Internal Revenue Service

Please check one block only. If necessary, check more than one block. If necessary, check more than one block. If necessary, check more than one block.	Remove address label on front cover and place it here <input type="checkbox"/>	Name of organization	Employer Identification Number
	Check name, etc. if necessary.	The Regents of the University of California (see attached)	
	Enter employer identifica- tion number at right only if incorrect or not shown on label.	Number and street Suite 689 University Hall, 2200 University Avenue	
		City or town, State and ZIP code Berkeley, California 94720	

Please place an "X" in the one numbered block that applies to your organization, provide any additional information called for, and return the form promptly to the Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19155. Do not check a block until you have read the instructions and Code definitions applicable to that block. Section references are to the Internal Revenue Code of 1954.

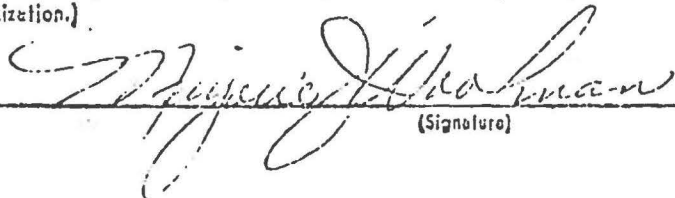
- 1 ☐ We are a private foundation within the meaning of section 507(a). (If you are a private foundation, are you claiming status as an operating foundation within the meaning of section 4942(j)(3)? ... ☐ Yes ☐ No If "Yes," attach a statement setting forth all the facts upon which you base your answer including an identification of the clause of section 4942(j)(3)(B) that is applicable.)

We are not a private foundation because we are:

- 2 ☐ A church. Section 170(b)(1)(A)(i).
- 3 ☐ A school. Section 170(b)(1)(A)(ii).
- 4 ☐ A hospital. Section 170(b)(1)(A)(iii).
- 5 ☐ A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(iii).
- 6 ☒ A Governmental unit. Section 170(b)(1)(A)(v). 
- ☐ An organization operated for the benefit of a college or university owned or operated by a Governmental unit. Section 170(b)(1)(A)(iv).
(Complete the Financial Schedule on page 2.)
- 8 ☐ An organization that normally receives a substantial part of its support from a Governmental unit or from the general public. Section 170(b)(1)(A)(vi).
(Complete the Financial Schedule on page 2.)
- 9 ☐ An organization that normally receives no more than 1/3 of its support from gross investment income and more than 1/3 of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions. Section 509(c)(2).
(Complete the Financial Schedule on page 2.)
- 10 ☐ An organization operated solely for the benefit of and in connection with one or more of the organizations described in 2 through 9 (or for the benefit of one or more organizations described in section 501(c)(1), (2), or (3) and also described in 9 above), but not controlled by disqualified persons other than foundation managers. Section 507(b)(3).
(Attach a statement identifying and describing the organization(s) for whose benefit you are operated and the relationship between you and the organization(s).)
- 11 ☐ An organization organized and operated to test for public safety. Section 507(a)(4).

- 12 ☐ We are not sure of our classification.
(Attach a copy of your most recently filed information return, Form 990-A, if you filed one, and a statement describing your operations and explaining why you are not sure of your classification. If you think you may be described in 7, 8, or 9, complete the Financial Schedule on page 2.)

I declare that I have examined the information entered on this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete. (Must be signed by a principal officer, manager, or authorized trustee of the organization.)


(Signature)

NOV 30 1970

(Date)

Secretary of The Regents of the University of California

(Title)

1. 12

2.